

Friday, 7 November 2011

(9.45 am)

(Proceedings delayed)

(9.52 am)

Ruling

LORD JUSTICE GOLDRING:

1. Dr Daniel Du Plessis and Dr Al-Sarraj are neuro-pathologists. Next Monday, they are to have a meeting. Everyone agrees it is sensible for them to do so on their own. Their views are very important, and will feed into the views of the pathologists, who are to meet shortly thereafter. They are instructed respectively by me and the families.

2. There is an issue about the agenda that should be used for that meeting. Ms Lambert QC, Counsel to the Inquests, has, after some consultation, drafted an agenda. Ms Khan QC, counsel for 75 of the families, has drafted another one. Each submits that hers is the agenda which should be used. As an alternative, Ms Khan submits that both should be. Ms Richards QC, counsel for the South Yorkshire Metropolitan Ambulance Service, agrees with Ms Lambert; Ms Studd, for St John Ambulance, inclines to Ms Khan's view but submits that, if possible, the agendas should be amalgamated.

3. Having now read both agendas, I have come to the following views:

(1) There must be one agenda. The doctors have a day. It will take considerable time properly to work through one, let alone two. Moreover, to have two would be confusing and unhelpful.

(2) These are very difficult issues. The jury in due course will need considerable assistance in dealing with them.

(3) Ms Lambert's agenda is comprehensive and expressed in a neutral, non-leading way. There is a series of open, detailed and logical questions which permit proper discussion and enable the pathologists to express their views in a way consistent with their duty to the court.

(4) While I understand how Ms Khan's agenda is set out in the way it is, it seems to me problematic. As I have said, these are very difficult issues, possibly leading to quite

nuanced expressions of opinion. This agenda simply asks the doctors to say whether they agree or disagree with certain propositions which have been drafted by the lawyers. In contrast to Ms Lambert's open questions, which seek views without suggesting answers, Ms Khan's seeks effectively to constrain the answers within a specific ambit defined by the lawyers. It seems to me, too, that Ms Richards has a point when she submits that the questions are sometimes tendentious, focusing heavily on brain weight, a difficult and possibly disputed area. Question 8 is particularly difficult in that regard.

4. In my view, the one agenda next Monday should be Ms Lambert's. Of course, that does not mean that following the meeting there might not be further questions or, indeed, a further meeting.